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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

FEDERAL-STATE JOINT BOARD ON  
UNIVERSAL SERVICE: PROMOTING  
DEPLOYMENT AND SUBSCRIBERSHIP  
IN UNSERVED AND UNDERSERVED  
AREAS, INCLUDING TRIBAL AND  
INSULAR AREAS

CC Docket No. 96-45

To: Common Carrier Bureau

COMMENTS OF SMITH BAGLEY, INC.

Smith Bagley, Inc. ("SBI"), by its attorneys, respectfully submits these Comments in response to the Further Notice of Proposed Rulemaking, released on September 3, 1999 (FCC 99-204) (hereafter, "FNPRM") regarding the promotion of deployment and subscribership in unserved and underserved areas, including tribal and insular areas pursuant to Section 254 of the Communications Act of 1934, as amended, ("the Act"). SBI supports a Commission finding that the FCC has the authority to assume jurisdiction over the distribution of USF funds for wireless carriers seeking to provide service on Native American lands as a means of removing impediments to the deployment of telecommunications services in these areas.

**I. Introduction**

1. SBI is a Cellular Radiotelephone Service provider in the states of Arizona and New Mexico. In June of this year, SBI filed with the Commission a petition for designation as an ETC,

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to enable it to provide universal service to the federally reserved Native American lands within its Arizona and New Mexico service area.<sup>1</sup>

2. SBI supports the Commission's efforts to find ways to remove impediments and increase the level of telecommunications subscribership on Native American lands. As the year 2000 approaches, it is painfully obvious that with telephone penetration levels on many Native American reservations below 30%, deployment of telecommunications services in these areas cannot happen without access to Universal Service funds.

## **II. Demographic and Geographic Impediments to Increased Penetration In Tribal Lands**

3. SBI's cellular service area in the Arizona 3 RSA and portions of the New Mexico 1 and New Mexico 3 RSAs, serves five Native American tribes, including the Navajo, Pueblo of Zuni, Hopi, Ramah, and White Mountain Apache reservations. SBI serves a substantial portion of the Navajo Nation, the largest Native American reservation in the U.S. This reservation alone encompasses roughly 12,000 square miles and over 85,000 people in SBI's service area. Substantial portions of the geographic area licensed to SBI are not served by any local exchange carrier. The sheer distance, combined with very small and scattered population centers make it economically infeasible for wireline carriers serve these areas.

4. SBI provides usable wireless signal to substantially all of the Native American reservations located within its service area. SBI's signal currently covers thousands of homes that can best be characterized as "phoneless." Statistically, approximately three quarters of the

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<sup>1/</sup> See Petition for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. § 214(e)(6), FCC 97-419, filed June 2, 1999.

households on the Navajo reservation, encompassing over 50,000 people, are now phoneless. Yet despite several aggressive marketing efforts, SBI cannot get many of these people to subscribe to its wireless service simply because the median per capita income on the reservations is approximately \$5000. The poverty is extreme and even a basic lifeline service priced at \$10.00 per month is out of reach for most families. Native American lands have a particularly low telephone service penetration rate and they are among the highest cost areas to serve. As a result, additional support is needed for any carrier wishing to provide these areas with service. It is precisely this situation that the nation's universal service program was designed to address.

### **III. Financial Impediments to Increased Penetration In Tribal Lands**

5. The low income levels of Native Americans living on reservations makes the provision of telecommunications services in tribal areas economically burdensome. For example, the Navajo Nation has an extraordinarily high poverty rate - 56.1% of persons and 57.4% of families are living below the poverty line. This is even higher than the already high 46.2% poverty rate for all American Indians and 4.34 times higher than the United States Average of 12.9%.<sup>2</sup> The severely low income level of the Navajo Nation, and indeed all Native Americans, makes it impossible for most telecommunications service providers to rely on the ability to pass through its costs to its customers. If carriers were to do so, Native Americans would never be able to afford service and simply would not subscribe.

6. To combat this problem, SBI supports removing impediments which currently do not allow wireless carriers access to USF funding. Without the benefit of federal USF funding, wireless

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<sup>2/</sup> Figures derived from the 1997 Bureau of Census data.

carriers cannot provide service into these high cost areas where ILECs are receiving USF support. Carriers lacking the wireline infrastructure (i.e. wireless carriers) to simply expand their service are at a particular disadvantage. In SBI's case, this problem is less severe because the company has already made a business decision to construct a system which provides coverage to substantially all of the Native American lands in its service area. For many carriers, and in particular, wireline carriers, the expense of expanding service into high cost areas is such that many carriers would simply forego the opportunity to reach potential customers in such areas. When a carrier decides to avoid extension of service to rural and high cost areas due to the expense, the Commission must develop means to foster the availability of competitive telecommunications services throughout the country.<sup>3</sup> The public interest demands effective solutions to this problem and wireless carriers are in the best position to deliver relief with the assistance of federal USF funding.

#### **IV. The FCC Should Assume Jurisdiction Over Universal Service Funding to Tribal Lands**

7. Currently, wireless telecommunications carriers are thwarted in their attempts to obtain federal USF dollars by many state public utilities commissions which refuse to expedite processing of wireless carriers' applications to obtain Eligible Telecommunications Carrier ("ETC") designation. The state commissions receive pressure from some Incumbent Local Exchange Carrier's ("ILECs") which insist that wireless carriers are unable to demonstrate that they are eligible for ETC designation because they cannot currently offer the necessary advanced services.<sup>4</sup> The

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<sup>3/</sup> Report and Order In the Matter of Federal-State Joint Board on Universal Service, 12 FCC Rcd 8776, 8799-8806 (May 7, 1997).

<sup>4/</sup> *See, e.g.*, Comments of Project Telephone Company, Inc. and Range Telephone Cooperative, Inc., pp. 24-27.

ILECs interpretation of the Section 214(e) requirements only serves to thwart competition in high cost and low income areas.

8. These same ILEC's dispute the FCC's authority to grant ETC designation for carriers wishing to provide service to Native American lands.<sup>5</sup> However, the Commission has previously recognized the provision of service to Native American lands as "not subject to the jurisdiction of a state commission for purposes of 214(e)(6)."<sup>6</sup> More important, the FCC has determined that it has the ultimate responsibility to effectuate Section 254 of the Act which governs Universal Service at the behest of Congress.<sup>7</sup> The Commission's plenary authority over Universal Service in conjunction with the FCC's decision in *Fort Mojave* clearly removes jurisdiction from the states, thus negating any argument to the contrary filed by the various ILECs.

9. The purpose of the Act is to foster the availability of competitive telecommunications services throughout the country, particularly to rural and high cost areas, including Native American lands. Ensuring that these areas have not only basic telephone service, but also a variety of telecommunications providers to choose from, has been repeatedly acknowledged by each of the Commissioners as a priority for this agency.

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<sup>5/</sup> See e.g., Comments of Project Telephone Company, Inc. and Range Telephone Cooperative, Inc., pp. 10-24.

<sup>6/</sup> See *Designation of Fort Mojave Telecommunications, Inc., et al.*, 13 FCC Rcd 4547, 4549, (Com. Car. Bur. 1998).

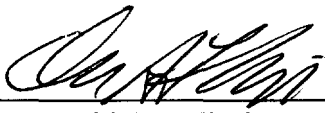
<sup>7/</sup> See *Federal-State Joint Board on Universal Service (Report and Order)*, 12 FCC Rcd 8776, 9192 (1997).

**V. Conclusion**

The geographic, demographic and financial aspects of Native American life on tribal lands makes apparent the immediate need to provide affordable service in these areas. Furthermore, there is nothing which prohibits the FCC from assuming jurisdiction over the distribution of USF funds to wireless carriers seeking to provide service to tribal lands. For these reasons, SBI supports a finding in this proceeding that the FCC has authority to distribute USF funds to wireless carriers seeking funds to serve tribal lands.

Respectfully submitted,

**SMITH BAGLEY, INC.**

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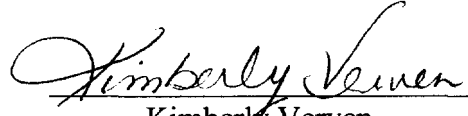
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December 17, 1999

## CERTIFICATE OF SERVICE

I, Kimberly Verven an employee of Lukas, Nace, Gutierrez & Sachs, Chartered, hereby certify that on this 17<sup>th</sup> day of December 1999, that I have caused a copy of the attached "Comments" to be delivered to the persons listed below:

  
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